

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

XIAOCHUN GAO,

Plaintiff,

-V-

SAVOUR SICHUAN INC. *et al.*,

Defendants.

19 Civ. 2515 (JPC)

ORDER

JOHN P. CRONAN, United States District Judge:

On May 1, 2024, at 10:30 a.m., the Court held a conference on Plaintiff’s motions for default judgment against Defendants La Vie En Szechuan Restaurant Corporation (“La Vie”) and Yi Zhang, Dkts. 195-197 (motion for default judgment against La Vie), Dkts. 198-200 (motion to strike and to render default judgment against Zhang). Neither Defendant attended the conference. In fact, as noted at the conference, neither Defendant has appeared or participated in the action since November 2020, when the Court granted defense counsel’s motion to withdraw from representing these Defendants, Dkt. 44. In that motion, defense counsel represented *inter alia* that his attempts to coordinate his representations of Zhang and La Vie (through its owner Zhang) were met with “unresponsiveness or outright refusal to cooperate in any further proceedings,” and further that Zhang had stopped paying for his legal services. *See* Dkt. 37.

As discussed at the conference, Plaintiff served the operative Third Amended Complaint on La Vie on April 26, 2021, making the answer due by May 17, 2021. Dkt. 82. Yet La Vie never answered. The Clerk of Court thus issued a Certificate of Default against La Vie, pursuant to Plaintiff's request, on March 8, 2024. Dkt. 191. As to Zhang, although he answered the First

Amended Complaint, Dkt. 12, Plaintiff never served him with later versions of the Complaint. Moreover, neither Zhang nor La Vie appear to have received any of Plaintiff's filings since November 2020, save for Plaintiff's recent motion for default judgment against them, *see* Dkt. 201.

The Court further noted that neither of Plaintiff's motions for default judgment complied with the requirements in Local Civil Rule 55.2. Given this procedural noncompliance, the anomalous posture of the case, and the Court's concerns with the adequacy of notice to the non-appearing Defendants as to the progress of this litigation, the Court denied Plaintiff's motions without prejudice to renewal.

The Court will hold a telephonic conference on May 22, 2024, at 11:00 a.m., and orders Defendants La Vie and Zhang to appear at that conference to indicate whether they intend to defend in this action. The Court notes that La Vie, a corporate defendant, may appear in an action only through counsel. *Jones v. Niagara Frontier Transp. Auth.*, 722 F.2d 20, 22 (2d Cir. 1983). At the scheduled time, Zhang, counsel for La Vie, and counsel for Plaintiff should call (866) 434-5269, access code 9176261. Should Zhang and/or La Vie fail to appear at this telephonic conference, the Court will grant leave to Plaintiff to reinitiate default judgment proceedings.


The Court directs Plaintiff, by May 2, 2024, to mail via overnight courier this Order, as well as the Court's Findings of Fact and Conclusions of Law and Judgment, Dkts. 182-183, to both La Vie and Zhang, at 14 East 33rd Street New York, NY 10016 (La Vie's last known location and Zhang's former place of business), and to mail via overnight courier the same materials to Zhang at what appears to be his last known residence, 51 Skyhill Road, Apartment 302, Alexandria, VA 22314. Also by May 2, 2024, Plaintiff is directed to email this Order and the Court's Findings of Fact and Conclusions of Law and Judgment—while simultaneously copying the undersigned's

Chambers at CronanChambers@nysd.uscourts.gov—to lavieenszechuan1433@gmail.com, which email address Zhang’s former counsel apparently used to try to reach Zhang. *See* Dkt. 37. Plaintiff shall file proof of service on the docket no later than May 3, 2024.

The Clerk of Court is respectfully directed to terminate the motions pending at Docket Numbers 195 and 198.

SO ORDERED.

Dated: May 1, 2024
New York, New York



JOHN P. CRONAN
United States District Judge